IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE FOURTEENTH DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE G. BIKSHAPATHY

and
THE HON'BLE MR JUSTICE P.S.NARAYANA

WRIT PETITION NO : 19353 of 2004

Between:

1 Government of India, rep.by its Secretary to the Government Ministry of Information and Braodcasting, Sastry Bhavan, New Delhi-110001.
2 The Director General, All India Radio, Prasar Bharati, Broadcasting Corporation of India,
Parliament Street, New Delhi.

..... PETITIONERS

AND

Dr.K.B.Gopalam, S/o.Sri K.V.N.Acharya,
R/o.208, Sapthagiri Apartments, Padmarao Nagar, Secunderabad.

.....RESPONDENT

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue preferably a writ in the nature of certiorari or any appropriate writ, order or direction, calling for the records pertaining to O.A.No.517 of 2002, dt. 16-2-2004 on the file of Hon'ble central Administrative Tribunal, Hyderabad Bench, Hyderabad, and quash the same.

Counsel for the Petitioners: MR.ARAJASHEKAR REDDY (SC FOR CG)

Counsel for the Respondent : Mr.B.Narasimha Sarma

The Court made the following :

ORAL ORDER (Per Hon'ble Sri Justice G.Bikshapathy)

1. The writ petition is filed assailing the order of the Central Administrative Tribunal, Hyderabad in O.A.No.517 of 2002, dated 16.2.2004.

2. The respondent herein filed the said O.A. challenging the order, dated 27.3.2001 passed by the disciplinary authority dismissing him from service as approved by the appellate authority.

3. It is the case of the petitioner in O.A. that he was under medical leave for a considerable length of period and therefore, he could not attend the office, but however, he was dismissed from service on conducting enquiry following the procedure laid down in A.P. Civil Services (Classification, Control and Appeal) Rules, 1991. The learned Tribunal allowed the O.A. setting aside the order, dated 27.3.2001 and directing the authorities to impose punishment other than the dismissal, removal or compulsory retirement. Against the order passed in the O.A., this writ petition has been filed.

4. The learned standing counsel for Central Government, however, submits that the order of the Tribunal is illegal and contrary to law. When once the charges are proved, the punishment is within the domain of the disciplinary authority, and therefore, the Tribunal ought

not to have passed the order directing the authorities to impose alternative punishment other than dismissal, removal or compulsory retirement.

5. We have heard the learned counsel for the respondent also.

6. The Tribunal, while allowing the O.A. observed thus:

> *"The disciplinary authority has not taken into consideration the fact that during the first spell of absence of the applicant, the applicant has primarily applied for leave and he received the communication of rejection of his leave only on 27.1.1995 by the telegram issued to him. Further, the disciplinary authority has also not taken into consideration the fact that the application has explained the reasons for seeking for extension of leave during the above said two spells, in his representation submitted by him dated 23.2.1999 to the enquiry report, though the medical certificates were produced by him later. The fact remains that the absence of the applicant was due to genuine and unavoidable reasons. It has been held in a decision reported in (1998) 3 SCC 192 in the case of Colour-Chem Ltd., Vs. A.L.Alaspurkar And Others, that "however, when looking to the nature of the charge of even major misconduct which is found proved if the punishment of dismissal or discharge as imposed is found to be grossly disproportionate in the light of the nature of the misconduct or the past record of the employee concerned involved in the misconduct or is such which no reasonable employer would ever impose in like circumstances, inflicting of such punishment would be unfair labour practice by itself being an instance of victimisation in law or legal victimisation independent of factual victimisation, if any." In the instant case having regard to the nature of the charge proved against the applicant, in our view the punishment imposed under the impugned orders is shockingly disproportionate to the nature of the charges established particularly, when the applicant has explained the reasons for his absence during the above mentioned period of the charge memo and has also applied for leave during the first spell of his absence on medical grounds producing the medical certificate in support of the said defence. At this stage, the learned standing counsel for the respondents has brought to our notice a decision of the Hon'ble Supreme Court reported in 2003 (1) SLJ 181 in the case of State Bank of India, Hyderabad and Another Vs. S.Mohammed Gaffar, wherein it was held that "High Court has no powers to interfere in penalty imposed by the disciplinary authority unless it stares in face of Court." But in the instant case having regard*

to the entire facts and circumstances of the case, we have come to the conclusion that the punishment imposed is shockingly disproportionate to the nature of the charge established against the applicant and the matter requires reconsideration by the disciplinary authority. We, therefore, find it necessary to set aside the impugned orders of punishment of dismissal from service and remand the matter to the first respondent/disciplinary authority to reconsider the matter and to impose appropriate punishment other than dismissal or removal or compulsory retirement, by passing fresh order."

The Tribunal has discussed the matter at length and held that this punishment is disproportionate to the alleged gravity of misconduct. The Tribunal also observed that the petitioner was in fact suffering from disability with which he is covered by the medical certificate.

7 . In view of the findings of the Tribunal, we are not inclined to interfere with the said order.

8. The writ petition is accordingly dismissed. No costs.

(G. BIKSHAPATHY, J.)

14th December, 2004.

(P.S. NARAYANA, J.)

bcj

To

1 The Secretary to the Government, Government of India, Ministry of Information and Braodcasting, Sastry Bhavan, New Delhi-110001.
2 The Director General, All India Radio, Prasar Bharati, Broadcasting Corporation of India, Parliament Street, New Delhi.

3 The Registrar, Central Administrative Tribunal, Hyderabad Bench, Hyderabad

4 Two C.D. copies